



Task Force on Court Facilities
455 Golden Gate Avenue, San Francisco, CA 94102-3660

Meeting Report
October 18 & 19, 2000
Holiday Inn, Emeryville, CA

<p>ATTENDEES:</p> <p>TASK FORCE MEMBERS:</p> <p>PRESENT: Hon. Daniel J. Kremer, Chair Mr. Greg Abel Mr. Wylie Aitken Sheriff Robert T. Doyle Hon. Gary Freeman Mr. David Janssen Mr. Fred Klass Hon. Michael Nail Hon. Wayne Peterson Hon. Charles V. Smith Mr. Anthony Tyrrell Hon. Diane Elan Wick</p> <p>ABSENT: Hon. Joan B. Bechtel Ms. Yvonne Campos Mr. John Clarke Mr. Mike Courtney Hon. Hector De La Torre Hon. Jerry Eaves</p> <p>TASK FORCE STAFF: Mr. Robert Lloyd, Project Director, Facilities Unit Mr. Robert Emerson, Project Manager, Senior Facilities Planner Ms. Patricia Bonderud, AIA, CSI Facilities Planner</p>	<p>PRESENTERS: Mr. Jay Smith, Daniel, Mann, Johnson, & Mendenhall Mr. Tom Gardner, Vitetta Group Mr. Dan Smith, DSA/Vitetta Group Mr. Andy Cupples, Daniel, Mann, Johnson & Mendenhall</p> <p>CONSULTANTS TO THE TASK FORCE: Ms. Kit Cole, Vitetta Group</p> <p>GUESTS: Mr. John H. Abbott, County of Orange Mr. Kevin Carruth, Santa Clara County GSA Mr. Bruce Doenges, Superior Court, County of Ventura Mr. Terry Dryer, County of Ventura Mr. Joseph T. Fallin, Superior Court, County of Los Angeles Mr. Tim Fedorchak, County of Stanislaus Ms. Tressa Kentner, Superior Court, County of San Bernardino Ms. Catherine Knighten, County of Orange Mr. Dave Kronberg, Sonoma County GSA Mr. Bill Kunde, County of Yolo Mr. Rubin Lopez, California State Association of Counties Mr. William J. Kelly, County of San Diego Ms. Sally Lukenbill, California Department of Finance Mr. Nick Marinovich, County of San Diego Mr. Jack Miller, County of San Diego Mr. Mark Nielsen, County of El Dorado Mr. Garry Raley, Superior Court, County of Riverside Mr. Robert Sherman, Superior Court, County of Ventura Ms. Pat Sweeten, Alameda County Superior Court Ms. Joy Walton, County of Alameda Mr. Christopher Warner, San Bernardino Superior Court Mr. Joshua Weinstein, Administrative Office of the Courts Mr. John Van Whervin, Superior Court, County of Los Angeles</p>
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I. OPENING REMARKS – Justice Daniel Kremer

- 1) Justice Kremer opened the Task force meeting at 10:00 a.m. and reviewed the meeting agenda.
- 2) The Task force reviewed and unanimously approved the meeting report from the August 30 & 31, 2000 meeting in Santa Barbara (Meeting #12).

II. WRITING WORKING GROUP UPDATE – Mr. Greg Abel

- 1) Mr. Abel updated the task force on the activities of the working group at its first meeting which was held on October 3rd in Los Angeles:
 - a) The timeline and process for completing the 2nd Interim Report were reviewed.
 - b) The report format and organization were discussed.
 - c) An outline of the executive summary was reviewed.
 - d) Drafts of sections 1, 2, and 3 of the report were reviewed and edited in detail.
- 2) Mr. Abel announced that the next meeting of the working group is planned in conjunction with the task force meeting scheduled for November 8th in Los Angeles.
- 3) Mr. Abel noted that the goal of the working group is to have a final draft of the report for task force review and approval at the task force's December meeting in San Bernardino.

III. PHASE 4 – FACILITIES EVALUATION PROGRESS REPORT - Mr. Jay Smith

- 1) Mr. Smith outlined the agenda for the Phase 4 discussion as follows:
 - a) Status of surveys and planning options.
 - b) Schedule for remaining counties.
 - c) Schedule for the task force report.
- 2) Mr. Smith distributed a table and summary that showed progress to date as follows:
 - a) County surveys are 100% complete.
 - b) Appellate surveys are 100% complete.
 - c) County planning options were complete as of August 31 with the exception of Los Angeles and San Mateo.
 - d) 52 county evaluation reports have been completed. The remaining county reports will be completed by November 15.
- 3) Mr. Smith also distributed an updated schedule showing upcoming work and milestones for the database, evaluations, county reports, Phase 4 & 5 reports, 2nd Interim Report, and task force meetings (including proposed writing workshops). He noted that the comprehensive statewide roll-ups of the survey data should be completed at the end of October and will be presented to the task force in November. The final statewide roll-ups will be completed at the end of November. Mr. Smith reported that the Phase 4 report narrative will be drafted over the next two weeks concurrently with the drafting of section 4 of the interim report.
- 4) Task force members made the following comments regarding the Phase 4 work:

- a) Sheriff Doyle asked Mr. Smith to characterize the comments received to date on the county reports. Mr. Smith replied that the comments have been generally favorable and have included responses to the three primary areas of review requested. Some of the comments have included corrective comments regarding the factual content of the report (e.g. number of courtrooms, specifics regarding particular facilities).
- b) Mr. Abel asked Mr. Smith when he expected the presentations to the counties to be completed. Mr. Smith replied that the meetings will be completed by October 30th with three exceptions: the Alameda County presentation is delayed due to some database problems; the San Mateo County presentation has not yet been scheduled although DMJM expects the meeting to be during the 2nd week of November; and the Los Angeles County presentation has not been scheduled.
- c) Mr. Abel noted that the Writing Working Group is only assisting in the editing of the 2nd Interim Report and is not editing the phase 4 and 5 reports. He suggested that the phase 4 and 5 reports be reviewed and edited by the committees reviewing the work of each phase. He also noted the schedule for the 2nd Interim Report: a comprehensive draft for review at the November 8th task force meeting; a final draft sent to task force members about the 29th of November; and sending the report to the printer on December 15. Mr. Lloyd noted that the reference documents for the report will be provided on a CD.
- d) Supervisor Smith asked about the specific time frame for the comments on the 2nd Interim Report. Justice Kremer noted that the 2nd Interim Report is issued for comment on January 1, 2001 and that the Final Report is due July 1, 2001. Mr. Abel suggested that additional task force meetings will be required to review the comments received. Justice Kremer said that a schedule for additional meetings will be proposed at the meeting in San Bernardino. Mr. Lloyd suggested that at least two meetings would be required: one to review the comments and one to approve the Final Report.

IV. REVIEW OF LAND AND PARKING COSTS – Mr. Jay Smith

- 1) Mr. Smith outlined the proposed methodology of estimating land and parking costs as follows:
 - a) Rationale for Land and Parking Cost
 - 1) Project sites range from urban to suburban locations in largest 21 counties
 - 2) Higher land costs in urban core projects often require parking structures
 - 3) Greater height and density in response to site and land values tends to mitigate higher land cost
 - 4) In many urban core areas, public expects to pay for parking, and parking revenues can fund revenue bonds
 - 5) Parking facilities often are developed by parking districts and redevelopment agencies.
 - b) Land Cost Profiles (based on DGS data)
 - 1) Largest, most urban 7 counties (70% of court space)
 - a) Average cost is \$70/sq. ft.
 - b) Land costs for 60% of projects will exceed \$40/ sq. ft.
 - 2) Next most urban 14 counties (21% of court space)
 - a) Average cost is \$33/sq. ft.
 - b) Land costs for 25% of projects will exceed \$40/ sq. ft.
 - 3) Balance of counties (9% of court space)
 - a) Average cost is \$12/sq. ft.

b) Land costs for 0% of projects will exceed \$40/ sq. ft.

c) Key Parameters of Parking Cost

- 1) Parking spaces per courtroom: 45
- 2) Gross area per courtroom: 10,700 sq.ft.
- 3) Total construction cost per courtroom: \$1,947,400
- 4) Area per parking space: 350 sq. ft.
- 5) Parking structure project cost, per space: \$20,800
- 6) On-grade site development cost, per site sq. ft.: \$17

d) Parking Facility Assumptions

- 1) In the largest 7 most urban counties
 - a) 60% of projects will require parking structures
 - b) Alternatives for 50% & 100% of structured parking demand
- 2) In next 14 most urban counties
 - a) 25% of projects will require parking structures
 - b) Alternatives for 50% & 100% of structured parking demand
- 3) In the balance of projects in all counties
 - a) Provide on-grade parking satisfying 100% of the parking demand

e) Recommended Allowance for Land and Parking Cost (as % of Construction Cost) –

- 1) Case 1 – 100% of Structured Parking Provided
 - a) Most urban 7 counties (70% of court space): 63%
 - b) Next most urban 14 counties (21% of court space): 45%
 - c) Balance of counties (37 counties; 9% of court space): 27%
- 2) Case 2 – 50% of Structured Parking Provided
 - a) Most urban 7 counties (70% of court space): 44%
 - b) Next most urban 14 counties (21% of court space): 37%
 - c) Balance of counties (37 counties; 9% of court space): 27%
- 3) Comparison of Parking and Land Factors

	<u>50%</u>	<u>100%</u>
Most urban 7 counties (70% of court space):	44%	63%
Next most urban 14 counties (21% of court space):	37%	45%
Balance of counties (37 counties; 9% of court space):	27%	27%

2) Mr. Smith noted that, when carried through the costing process for the total statewide costs, the difference between the 50% case and the 100% case (defined as 45 parking spaces per courtroom) results in a difference of 6% in total capital need. He also noted that the model outlined above is applied only to new buildings; existing structures are assumed not to need additional parking.

3) Task force members made the following comments:

- a) Mr. Klass asked about the purpose and application of the cost model. He expressed concern about applying the indicated factors to each county individually since there would be county-by-county variations.
- b) Justice Kremer noted that the purpose of developing factors relative to base construction costs is to provide information to decision makers regarding various potential costs, such as land and parking cost.
- c) Mr. Abel noted that in Sonoma County 90% of the complaints to the courts concern parking or security and that parking definitely needs to be considered in projects.

- d) Mr. Klass expressed concern that the resulting costs are not necessarily real-world estimates. He cited the example of the new courthouse in San Francisco which does not include any public parking.
- e) Supervisor Freeman stated that project cost estimates need to include all costs and that it would be a problem if the cost estimates were too low.
- f) Judge Peterson noted that San Francisco is an exception and that some new courts in San Diego County have inadequate parking that has resulted in major problems and continuous complaints from the public. Judge Peterson thinks that the number of parking spaces should be related to the size of the building, not the number of courtrooms.
- g) Supervisor Freeman noted that allowance for a reasonable amount of parking must be included in each project. The potential result of not doing so could be complaints from the counties that they are in effect under a state mandate to provide the required parking.
- h) Mr. Klass asked if it would be possible to look at three or four recently constructed courthouses comparing actual costs to those of the land and parking cost model. He noted that the state doesn't provide 100% parking for new office buildings and that in Sacramento new buildings aren't required to provide more than 10 to 20% parking.
- i) Mr. Smith noted that the equivalent of 100% of the parking requirements are provided by diverse means such as public transportation and non-project parking lots. He further noted that the expectation of the public to pay for parking will provide a revenue stream that can fund parking structures such that meeting the full parking demand does not need to be included in the cost of a project.
- j) Justice Kremer suggested that the consultants, in the report text discussing parking and land costs, clearly state that the actual amount of parking provided should be decided site by site and that the estimated costs are global cost estimates. He further suggested that examples illustrating how recent projects handled the parking issue should be included in the report. Justice Kremer stated that he thought that there was a consensus that parking and land costs should be included as a range of options (0%, 50%, and 100% of structured parking demand).

VI. PHASE 5 FINANCE COMMITTEE REPORT – Mr. Tom Gardner

- 1) Mr. Gardner outlined the agenda for the update on the work of the Finance and Implementation Committee as follows:
 - a) Status of principles and issues adopted by the committee
 - b) Status of draft Phase 5 report
- 2) Mr. Gardner reviewed the consensus issues approved by the task force on May 31:
 - a) Responsibility
 - (1) The state shall be fully responsible for all court facilities.
 - b) Fiscal Neutrality
 - (1) Responsibility for funding existing debt on facilities shall remain with counties until the debt is retired.
 - (2) If title transfers, it shall do so without payment for capitalized value of buildings.

- (3) Determine the counties' obligation for operations and maintenance payments to the state.
- c) Principles of Transfer
 - (1) It is critical to expedite the transfer of responsibility for court facilities.
 - (2) The transfer of responsibility shall be accomplished through negotiations between the state, the court, and the counties.
 - (3) The state shall not hold the counties liable for deferred maintenance for which no funds were earmarked to address that maintenance.
 - (4) Facilities determined as unsuitable for court use may or may not transfer based on outcomes of negotiations between the state, courts and counties.
 - (5) Issues regarding occupancy and use of space within a mixed-use building shall be agreed upon and spelled out in an MOU.
- d) Issues on which the committee has reached consensus since the Redding meeting
 - (1) Responsibility
 - (2) Fiscal neutrality
 - (3) Principles for transfer
 - (4) Implementation issues
 - (5) Principles for negotiation
- e) Committee's Consensus to Date
 - (1) Refining the meaning of "responsibility" for court facilities
 - (2) Further developing the concept of fiscal neutrality
 - (3) Establishing guiding principles for transferring responsibilities and property
 - (4) Determination of equity for both parties
 - (5) Providing guidance for implementation of the recommendations
 - (6) Principles to guide the negotiations between the Judicial Council and the counties
- 3) Mr. Gardner reviewed the Phase 5 Report Status:
 - (1) Working draft being reviewed by the committee
 - (2) Updated draft provided to the task force prior to November meeting
- 4) Mr. Gardner outlined the next steps:
 - (1) Committee review and approval of Phase 5 report
 - (2) Submittal of Phase 5 report to the task force for its review in November

VII. PUBLIC COMMENT

- 1) Mr. John Van Whervin, Assistant Director, Facilities Services and Capital Projects Divisions, Superior Court, County of Los Angeles made the following comment:

"At a previous Task Force meeting, John A. Clarke, Executive Officer of the Los Angeles Superior Court, requested the information on parking presented yesterday by DMJM.

"Of the last four courthouses to be designed and the last 3 courthouses to be constructed in Los Angeles County, the number of required parking spaces and their costs (both structure and surface parking) mirror the figures presented yesterday. Los Angeles County's Regional Planning Department has set the 45 spaces per courtroom as their standard. These numbers were factored into the construction costs whether the parking was revenue generating or provided for free. At the recently constructed Airport Courthouse, the Court and County deviated from the previously stated standard, and the Court now finds itself short of adequate parking spaces. There are approximately 350 spaces for 14 courtrooms, 280 spaces short of the discussed standard. The Board of Supervisors is now looking to acquire the necessary parking at a cost significantly higher

than the cost would have been had the parking standard not been deviated from in the original design.

"In a real world scenario, a reasonable amount of parking must be provided for jurors, litigants, employees and the public, especially in urban locations. To not do so would be shortsighted and eventually develop into the type of problem Los Angeles County currently faces at the Airport Courthouse. For your information, at the nearly completed Chatsworth Courthouse, and the Antelope Valley Courthouse, which will be under construction within the next six months, we are providing over 750 parking spaces for 18 courtrooms in Chatsworth and over 1100 parking spaces for 21 courtrooms in the Antelope Valley. Consideration needs to be given to the associated costs of parking in urban locations. If this represents a significant cost, it merely reflects the magnitude of the issue and should not be overlooked."

- 2) Task force members had the following comments regarding Mr. Van Whervin's comment:
 - a) Mr. Abel suggested that parking costs be highlighted as project costs with three options: 0%, 50% and 100% of structured parking demand.
 - b) Justice Kremer noted that a consensus had been reached that adequate parking should be provided as feasible on a project-by-project basis. The task force should provide a range of global costs for various options for decision makers to consider.

VIII. COST ANALYSIS OF SPACE MITIGATION RECOMMENDATIONS – Mr. Dan Smith

- 1) Mr. Smith reviewed the scope of the space mitigation cost analysis effort. He will develop estimates of cost savings due to space reduction that could be realized by the implementation of the 14 recommendations of the Space Mitigation Working Group. The analyses use existing data from various available sources and standard industry rules of thumb to develop the potential cost savings. Mr. Smith reviewed a sample analysis (developed for video arraignment) and indicated that the final package would consist of fourteen analyses with a similar level of detail plus a summary of the results.
- 2) After some general discussion amongst the task force members Justice Kremer indicated that the consensus of the group is that the analysis approach was on the right track and that Mr. Smith should proceed.

IX. PLANNING COMMITTEE'S REPORT TO TASK FORCE – Mr. Andy Cupples

- 1) Mr. Cupples handed out copies of the comments received so far from the counties and the courts on the county reports. Mr. Cupples noted that the comments were generally favorable and had been reviewed in detail in the joint meeting of the North and South Planning Committees. Mr. Cupples also handed out a statewide summary of the survey data and reviewed the various tables in the summary.
- 2) Task force members made the following comments:
 - a) Mr. Janssen noted that the population data appeared to be out of date. Mr. Abel noted that the population was for the year 1997. Mr. Klass suggested that the data should be updated or footnoted as to the year of the data. Justice Kremer indicated that the consensus of the task force is that the data should be used as is and properly footnoted.
 - b) Mr. Abel noted his concern regarding the difference between the approximately 9.6 million square feet of court space indicated in the summary and the 14.8 million square feet previously reported to the task force. Mr. Cupples noted that the 9.6

million figure is net component square feet (that is, it excludes circulation space) and excludes space in Alameda County, the appellate courts, and AOC-occupied space. When the 9.6 million figure is corrected for these differences, it will be much closer to the previous estimate of 14.8 million.

- c) Mr. Abel also questioned whether, in determining the amount of court space that is leased and the amount that is owned, a lease-to-own should be considered in the same category as a traditional lease.
- d) Mr. Janssen indicated his preference that lease-to-own space be counted with the county-owned space rather than with space with a traditional lease. Justice Kremer concurred and asked the consultants to count the lease-to-own space with the county-owned space.
- e) Regarding the presentation as a whole, Mr. Janssen expressed concern that there is a considerable amount of material being covered that needs to be digested by the task force. Mr. Klass agreed. Mr. Janssen also noted that he thought that having the written narrative that will accompany the tables in the Phase 4 report would be useful in digesting and understanding the data.
- f) Mr. Klass further noted that he did not think it consistent to identify a significant current shortfall and also adopt the principle that the transfer is to be fiscally neutral.
- g) Justice Kremer noted that the task force had been charged with establishing the facility needs of the courts and had given direction to the consultants regarding the criteria and methodology which was now resulting in the overall statewide data being presented.
- h) Mr. Aitken stated that, based on his experience in various courtrooms in California, he did not find the magnitude of the statewide current need surprising and that he thought that the court system facilities had been neglected.

X. FINANCE COMMITTEE REPORT TO TASK FORCE – Mr. Tom Gardner

- 1) Mr. Gardner reviewed principles and agenda items showing what had previously been approved by the task force and current principles that were being presented by the Finance and Implementation for approval. These are presented in the appendix to this meeting report.
- 2) The task force discussed the agenda items and took action as follows:
 - a) Maintaining the flow of projects in the pipeline – The task force approved this item in concept, subject to future consideration of the specific language.
 - b) Rejection of buildings by the state – The task force modified the language, but did not vote on approval pending further review by the committee.
 - c) Elements in the MOE – The task force unanimously approved the elements presented in the chart in concept, with the specific language reflecting the chart subject to future review.
 - d) Responsibility – The task force unanimously approved this item as modified.
 - e) Fiscal Neutrality – The task force unanimously approved this item as modified.
 - f) Transfer Principles – The task force unanimously approved this item as modified.
 - g) Implementation Issues – The task force unanimously approved this item as modified, except for paragraphs 6, 7, & 8 which were sent back to the committee for further consideration.

- h) Principles for Negotiation Involving Mixed-Use Buildings – The task force unanimously approved this item as modified, subject to reconsideration of the move-out provisions of paragraph 5.

XI. CLOSING REMARKS – Justice Daniel Kremer

- 1) Justice Kremer adjourned the meeting at 12:00 p.m.

Appendix – Finance and Implementation Committee Report

Note that the strikeouts and italics on all items represent changes made by committee at its meeting on October 18 and modifications made by the task force on October 19.

Agenda Item #1a – Maintaining the flow of projects in ~~the pipeline~~ *transition*

The Task Force believes that a program of financial incentives is an important step that will facilitate and encourage counties to continue the development of court facility projects during the period prior to the enactment of trial court facility legislation and extending from the effective date of such legislation until the transfer of responsibility for court facilities to the state. Therefore, the Task Force recommends urgency legislation be enacted to provide an incentive program, established in the form of *future* state reimbursement of county general fund expenditures for pre-approved projects, and subject to the enactment of trial court facilities legislation. The specifics of the task force's incentive plan are as follows:

1. The incentive program should be enacted as urgency legislation.
2. The incentive program ~~will~~ *shall* provide for state reimbursement of county general fund expenditures relating to pre-approved court facilities projects. *To be eligible for reimbursement, counties must obtain the prior written approval of proposed projects from the Judicial Council and the Department of Finance.*
3. The Judicial Council and the Department of Finance shall establish, *in a timely fashion*, written guidelines and procedural requirements for counties² requesting project reimbursement. The Judicial Council ~~will~~ *shall* review and prioritize all county requests and forward them to the Department of Finance for its review and final approval. Following written approval by the Judicial Council and the Department of Finance, counties ~~will~~ *shall* be reimbursed *in a timely manner* for court facility capital projects in accordance to the rules outlined above (previously #9).
4. All program reimbursement obligations shall be contingent upon the enactment of future legislation that provides for transfer of responsibility for court facilities to the state ~~or other state funding measures for court facilities~~. *If no legislation is enacted, no reimbursements shall be made.*
5. ~~To be eligible for reimbursement, counties must obtain the prior written approval of proposed projects from the Judicial Council and the Department of Finance.~~
6. Eligibility for project reimbursement shall extend from January 1, 2001 until the date of transfer of a county's court facilities to the state, ~~or enactment of other state funding measure for court facilities~~.
7. Eligible project costs shall only include ~~those~~ *the cost of* elements or phases funded by county general funds.
8. ~~In no event shall any costs or expenditures for a court facility project be reimbursed to the extent any county funds or properties that have been committed to that project prior to January 1, 2001 for a court facility project, or phase or element thereof. (Alternative language proposed by consultants: "Any county general funds expended or committed prior to January 1, 2001, for a court facility project, or any phase or element thereof, shall not be reimbursed.")~~ For these purposes, "committed" is defined as county general

fund moneys allocated, approved, appropriated, or committed by resolution or ordinance of a county board of supervisors.

9. ~~The Judicial Council and the Department of Finance shall establish written guidelines and procedural requirements for counties' requesting project reimbursement. The Judicial Council will review and prioritize all county requests and forward them to the Department of Finance for its review and final approval. Following written approval by the Judicial Council and the Department of Finance, counties will be reimbursed for court facility capital projects in accordance to the rules outlined above.~~

Agenda Item #1b - Establishing the threshold for rejection of buildings by the state

In connection with its recommendation that *the* state shall ultimately be responsible for court facilities, the Task Force recommends that *responsibility for* all existing court facilities currently being used for court functions be transferred to the state, except for facilities satisfying the criteria, *below for rejection as "unsuitable" as defined hereinafter.*

The state may reject a court facility ~~as unsuitable only if an a significant imminent threat or reasonably imminent threat~~ to the life, health or safety of the public or persons occupying the facility exists, including seismically hazardous conditions comprising either an "imminent risk" (level VII), ~~or "extensive but not imminent risk" (level VI), or "substantial risk" (level V)* or significant functional deficiencies, which in their totality are significant are present.~~ "Significant functional deficiencies" shall be defined as those comprising a totality of conditions that render the facility unsuitable for continued short or long term use for its currently intended court functions, ~~even for the short term.~~

A licensed structural engineer utilizing *the evaluation program* and criteria established by the Department of General Services Real Estate Services Division ~~will~~ *shall* evaluate any buildings built ~~after~~ *prior to* ___(date), unless previously upgraded, for seismic risk. These seismic evaluations ~~will~~ *shall* be funded by the state and completed prior to ~~beginning completion of the~~ *negotiations between the Judicial Council and each county* on the disposition of affected buildings.

A county ~~Counties~~ may appeal rejection of ~~an unsuitable~~ a building to the State Public Works Board. In the case of an appeal, the state shall have the burden of proof to justify the rejection of a court facility. If a facility is rejected, ~~the~~ *a* county shall be responsible *for providing necessary and suitable court facilities, as required by Government Code Section 68073 as that section read on July 1, 2000.* ~~for one of the following, at the state's election:~~

1. ~~Remedy the conditions that caused rejection, and, until such remedy is satisfactorily completed and the facility accepted, continue to be responsible for providing necessary and suitable court facilities as required by Government Code Section 68073 as that section read on July 1, 2000.~~
2. ~~Furnish compensation, including planning and administrative costs, to the Judicial Council, equal to the cost of the remedy of such conditions as a condition of the transfer to the state.~~
3. ~~If remedy is determined to be unfeasible and/or impractical, replace the unsuitable facility with an equal amount of suitable space and transfer the replacement space to the Judicial Council; or furnish compensation, including~~

- ~~planning and administrative costs, to the Judicial Council equal to the replacement cost of an equal amount of suitable space.~~
4. ~~Other suitable action by county accomplishing the same end and agreeable to the Judicial Council.~~

**Risk Acceptability Table, State Building Seismic Program, Report & Recommendations, Division of the State Architect, April 1994, page II-2. (Copy attached)*

Agenda Item #1c – Elements in the MOE

An MOE shall establish each county's annual financial obligation to the state with respect to court facilities. The MOE shall be determined by calculating the cost of facility maintenance items as outlined below. Items that have relatively stable costs are averaged over five years and adjusted to account for inflation to the date of transfer. Other costs such as lease payments are calculated differently to recognize the unique nature of the expenditure.

The "five year average" means the average, adjusted to account for inflation to the date of transfer, of the following fiscal years: 1995-1996, 1996-1997, 1997-1998, 1998-1999, and 1999-2000. Costs shall be based upon actual county expenditures for those items listed. Exclusions include land, buildings, capital expenditures, ~~major alterations~~ *betterment or remodeling (as defined by SAM)* that change the function of the building, ~~not maintenance~~, as well as parking provided in separate structures not dedicated solely to court use.

"Repair and maintenance projects" are included in the MOE and are defined in the SAM "as those projects that "continue the usability of a facility as its designed level of services." "Maintenance" includes any deferred maintenance. Any non-maintenance *project* (i.e., capital project), including betterment or alteration, as defined in the SAM, is not included in the MOE.

Lease payments ~~are~~ *shall be* included in the calculation of the MOE. The goal is to transfer resources that currently provide for a facility. Therefore, the calculation of the amount to be extended indefinitely shall be based on the obligations stated in the lease. To ensure sufficient resources to cover the obligations assumed by the county, the calculation of the MOE shall include any contractual increases in the years that they are effective in the lease, instead of a five-year average. Years following the end of the lease shall be the same as the last year of the lease ~~if all obligations are covered~~.

Following the adoption of legislation enacting the recommendations of the Task Force, ~~and the completion of MOEs and MOUs as a result of negotiations between the Judicial Council and the counties,~~ each county shall submit expenditure data to the Department of Finance and Judicial Council. ~~The~~ Every county auditor-controller shall review and certify the accuracy and completeness of the submitted maintenance cost data, consistent with legislation and the provisions of SAM *and make the calculations described below*. The Department of Finance and Judicial Council will review and concur with the proposed MOE, prior to adjusting the

amounts in each year for inflation. *Should disputes occur regarding the amount of the MOE, the Department of Finance shall act as final arbiter.*

~~The Department of Finance~~ Each county shall use the *average of the* four indices from the US Census Producer Price Index as follows: building, cleaning and maintenance; operating office property; construction maintenance and repair; building, janitorial and custodial for the purposes of this calculation. ~~The Department of Finance~~ Each county shall adjust each of the five years of cost data using the combined index, and then averaged to ~~insure~~ ensure that all cost items are brought up to the value of those items in the year the negotiations are completed.

The MOE shall not include any expenditure related to a ~~rejected~~ facility *not accepted by the state* or the portion of any court facility for which the county retains responsibility. In no event shall the MOE be payable by a county prior to the county and the Judicial Council entering into an MOU with respect to court facilities in that county. *The MOU between the Judicial Council and each county shall include the amount of the MOE.*

***NOTE:**

~~“‘Alteration’ means any modification or existing space (buildings, structure or other facilities) that change the use as to function, layout, capacity, or quality. Typical alternations include demolition of fixed partitions or initial installment of carpeting and moveable partitions.” (SAM, page 6806—cont.1)~~

~~“‘Betterment’ means any modification that increases the designed level of services or life expectancy of a facility or other state infrastructure (e.g., seismic improvements, upgrades, etc.)” (SAM, page 6806—cont.1)~~

MOE Elements and Associated Calculations

Element	Calculation	Additional Conditions
1. Purchase of land and buildings	Not in MOE	
2. Construction and construction services	Not in MOE	
3. Space rental/lease (except storage for court records)	In the MOE at rate specified in lease agreement. The allocation is a permanent element of the MOE.	.
4. Building maintenance and repairs, as defined by the SAM	Five-year average	Defined pursuant to the SAM.
5. Alterations <i>Betterment</i> for change of function, as defined by the SAM	Not in MOE	Defined pursuant to the SAM.
6. Purchase, installation, and maintenance of HVAC equipment	Five-year average	
7. Elevator purchase and maintenance	Five-year average	
8. Landscaping and grounds maintenance services	Five-year average	For mixed use buildings, prorate portion of property equal to portion of court spaces within the overall complex.
9 a. Parking lot maintenance <i>(Maintenance of parking dedicated to courts)</i>	In MOE at five-year average	
9 b. Parking lot maintenance <i>(Maintenance of parking for the general public parking that may be used by courts)</i>	Not in MOE	Provision for continuing future use shall be included in MOU.
10 a. <i>Maintenance of</i> juror parking (dedicated to courts)	In MOE at five-year average	Use of parking space and the cost of maintenance may be included in the transfer agreement.
10 b. <i>Maintenance of</i> juror parking (general public parking that may be used by courts)	Not in MOE	Provision for continuing future use shall be include in MOU.
11. Depreciation of building	Not in MOE	
12. Insurance on building	Last year of five-year period	In proportion to court spaces, <i>excluding the costs of excess insurance required by bonded indebtedness agreements.</i>
13. Grounds liability insurance	Last year of five-year period	In proportion to court spaces
14. Utility use charges	Consumption average for five years multiplied by last years rate	
15. Maintenance and repair of utilities	Five-year average	
16. <i>Maintenance of</i> exterior lighting and security <i>equipment</i>	Five-year average	

Agenda Item #1d – Principles and issues

Responsibility

1. The state shall ultimately be fully responsible for all court facilities, including providing facilities for current and future judges and staff.
2. Pursuant to AB 233, responsibility for providing court facilities for new judges and staff associated with those judges shall continue to rest with the state, after July 1, 1996 2001.
3. Responsibility for providing court facilities shall remain with *each county* ~~the counties~~ until completion of the negotiations between the *state* and *that county* ~~the counties~~.
4. Responsibilities of parties sharing mixed-use buildings shall be established by agreement.

Fiscal Neutrality

1. The control of court facilities should transfer to the state without any fiscal gain or loss to either the counties or the state.
2. Responsibility for funding existing debt on facilities shall remain with ~~the counties~~ *each county* until the debt is retired, either directly or by transferring the revenue stream and debt to the state.
3. If title transfers, it shall do so without payment for capitalized value of buildings and the land associated with those buildings. Determination of appraised value shall not be necessary as a condition of transfer.
4. Existing non-Rule 810 facility operations and maintenance costs, *as defined in supporting documents produced by the Task Force on Court Facilities*, shall continue to be funded by ~~the counties~~ *each county* through a maintenance of effort (MOE) agreement. ~~The MOE will be determined based on a calculation of the average of the most recent five fiscal years of non Rule 810 allowable costs related to facilities. Additionally, the amounts for each year shall be escalated to current dollars to the effective date of the negotiated transfer agreement between the Judicial Council and the counties, using the consumer or producer price indices for each year (or combination thereof), and averaging the resulting amounts, unless determined otherwise. Prior to _____ (date) each county shall submit to the Department of Finance data regarding non 810 facility costs from the most recent three five fiscal years. Prior to being submitted to the Department of Finance, all data shall be certified by the county auditor.~~ An MOE shall establish each county's annual financial obligation to the state with respect to court facilities. The MOE shall be determined by calculating the cost of facility maintenance items as outlined below. Items that have relatively stable costs are averaged over five years and adjusted to account for inflation to the date of transfer. Other costs such as lease payments are calculated differently to recognize the unique nature of the expenditure.

The "five year average" means the average, adjusted to account for inflation to the date of transfer, of the following fiscal years: 1995-1996, 1996-1997, 1997-1998, 1998-1999, and 1999-2000. Costs shall be based upon actual county expenditures for those items listed. Exclusions include land, buildings, capital expenditures, ~~major alterations~~ *betterment* or remodeling (*as defined by SAM*) that change the function of the building, ~~not maintenance~~, as well as parking provided in separate structures not dedicated solely to court use.

"Repair and maintenance projects" are included in the MOE and are defined in the SAM "as those projects that "continue the usability of a facility as its designed level of services." "Maintenance" includes any deferred maintenance. Any non-maintenance *project* (i.e., capital project), including betterment or alteration, as defined in the SAM, is not included in the MOE.

Lease payments ~~are~~ *shall be* included in the calculation of the MOE. The goal is to transfer resources that currently provide for a facility. Therefore, the calculation of the amount to be extended indefinitely shall be based on the obligations stated in the lease. To ensure sufficient resources to cover the obligations assumed by the county, the calculation of the MOE shall include any contractual increases in the years that they are effective in the lease, instead of a five-year average. Years following the end of the lease shall be the same as the last year of the lease ~~if all obligations are covered~~.

Following the adoption of legislation enacting the recommendations of the Task Force, and the completion of MOEs and MOUs as a result of negotiations between the Judicial Council and the counties, each county shall submit expenditure data to the Department of Finance and Judicial Council. The county auditor-controller shall review and certify the accuracy and completeness of the submitted maintenance cost data, consistent with legislation and the provisions of SAM *and make the calculations described below*. The Department of Finance and Judicial Council will review and concur with the proposed MOE. ~~prior to adjusting the amounts in each year for inflation.~~

~~The Department of Finance~~ *Each county* shall use the *average of the* four indices from the US Census Producer Price Index as follows: building, cleaning and maintenance; operating office property; construction maintenance and repair; building, janitorial and custodial for the purposes of this calculation. ~~The Department of Finance~~ *Each county* shall adjust each of the five years of cost data using the combined index, and then averaged to ~~insure~~ *ensure* that all cost items are brought up to the value of those items in the year the negotiations are completed.

The MOE shall not include any expenditure related to a ~~rejected~~ *facility not accepted by the state* or the portion of any court facility for which the county retains responsibility. In no event shall the MOE be payable by a county prior to the county and the Judicial Council entering into an MOU with respect to court facilities in that county. *The MOU between the state and each county shall include the amount of the MOE.*

4. Revenue generated by the Courthouse Construction fees will transfer from ~~the counties~~ *each county* to the state, less any funds obligated to debt service, to the extent that such debt remains with ~~the counties~~ *that county*. Should the debt transfer to the state, the corollary debt service stream shall also transfer to the state. *See #12 under Implementation Issues for more discussion on this issue.*

Transfer Principles

1. ~~All counties shall participate in the transfer of the responsibility for court facilities from the counties to the Judicial Council~~ *state, subject to the MOU between the Judicial Council and each county.*
2. **The Judicial Council will shall represent the state in negotiations with counties regarding the transfer of facilities responsibility from the counties to the state.**
3. The negotiations with each county shall be concluded with a memorandum of understanding (MOU) specifying the rights and obligations of the state and county, relative to the transferred property as well as any conditions or procedures that were mutually agreed to for the on-going administration of the property.
4. Upon completion of the MOU, the Judicial Council shall have the ongoing responsibility for providing court facilities in that county, *pursuant to the terms of the MOU*. In carrying out this responsibility, the Judicial Council will comply with all state laws and regulations governing the state's capital outlay and support budgets. Capital outlay projects included in

the Governor's budget will be executed under the oversight of the Public Works Board or other administrative body established by law for this purpose.

5. It is critical to expedite the transfer of responsibility for court facilities to the *state*.
6. The ~~Judicial Council~~ *state* shall not hold the counties liable for deferred maintenance that existed at the time responsibility for facilities is transferred and for which no funds were committed to address that maintenance.
7. Issues regarding occupancy and use of space within a mixed-use building shall be agreed upon by the Judicial Council and the counties and shall be spelled out in an MOU.
8. ~~The Judicial Council may reject the transfer of unsuitable buildings, in which case the county will continue to be responsible for providing the court with suitable and necessary space. A building that is "unsuitable for court use" is defined as any building with significant health, safety or seismic deficiencies. All other single use court facilities shall transfer to the state, unless mutually agreed to by all parties. Counties may appeal rejection of an unsuitable building by the state to the State Public Works Board. The "burden of proof" to demonstrate the justification for which the facility was rejected lies with the state. In the event that a building is rejected due to significant deficiencies, the county shall have the option of correcting the significant deficiencies prior to transfer, or furnishing the state a sum of money equal to the cost of the remedy. The state may use county's contribution for renovation or replacement of the facility. Should correction of the significant deficiencies be determined as unfeasible, the county shall be obligated as follows:~~
 - ~~To provide suitable court facilities under the current law, or~~
 - ~~To provide to the state an amount of money equal to the cost of replacement of the facility with a suitable facility of equivalent amount of space."~~
8. In connection with its recommendation that *the* state shall be ultimately responsible for court facilities, the Task Force recommends that *responsibility* for all existing court facilities currently being used for court functions be transferred to the state, except for facilities satisfying the criteria, *below* ~~for rejection as "unsuitable" as defined hereinafter.~~

The state may reject a court facility as unsuitable only if an imminent threat or reasonably imminent threat to the life, health or safety of the public or persons occupying the facility exists, including seismically hazardous conditions comprising either an "imminent risk" (level VII), ~~or "extensive but not imminent risk" (level VI), or "substantial risk" (level V)*~~ or significant functional deficiencies, *which in their totality are significant are present*. ~~"Significant functional deficiencies" shall be defined as those comprising a totality of conditions that render the facility unsuitable for continued short or long term use for its currently intended court functions, even for the short term.~~

A licensed structural engineer utilizing criteria established by the Department of General Services Real Estate Services Division ~~will~~ *shall* evaluate any buildings built ~~after~~ *prior to* ____ (date), unless previously upgraded, for seismic risk. These seismic evaluations ~~will~~ *shall* be funded by the state and completed prior to ~~beginning completion of the~~ negotiations *between the Judicial Council and each county* on the disposition of affected buildings.

A county ~~Counties~~ may appeal rejection of an unsuitable building to the State Public Works Board. In the case of an appeal, the state shall have the burden of proof to justify the rejection of a court facility. If a facility is rejected, ~~the~~ *a* county shall be responsible *for providing necessary and suitable court facilities, as required by Government Code Section 68073 as that section read on July 1, 2000.* ~~for one of the following, at the state's election:~~

9. Historically significant facilities, may or may not transfer, but must be made available to the ~~Judicial Council~~ *state* for court use or the county can, *with the agreement of the local court,*

opt to provide suitable and adequate court facilities in an alternative facility. Facilities considered "historic" shall either be registered on the ~~state's~~ *state or federal* historic register (pursuant to Health and Safety Code 18950 and Federal Code section) or be eligible for inclusion on ~~the~~ *either* register.

Implementation Issues

1. Negotiations between the Judicial Council and ~~the counties~~ *each county* regarding the transfer of *responsibility for court facilities* must be complete within three years after legislation implementing the Task Force's recommendations becomes effective.
2. The Judicial Council, in consultation with the local courts, and the counties ~~will~~ *shall* negotiate on a county-by-county and building-by-building basis in order to determine the most optimal way to provide court facilities in ~~that~~ *each* county.
3. The state Public Works Board ~~will~~ *shall* be the final arbiter in any disputes between the Judicial Council and a county ~~counties~~ during the ~~building-by-building~~ negotiations.
4. ~~All counties shall participate in the transfer of responsibility for court facilities from the counties to the Judicial Council state.~~
5. Both the county and the Judicial Council ~~are~~ *shall be* entitled to equity in court facilities, based on the respective proportional use of areas by the courts and by non-court county functions, at the time that the MOU is determined, regardless of which entity holds title to the facility.
6. Any county funds or property that have been allocated, approved, appropriated, or committed for a court facility project by a county board of supervisors, by resolution or ordinance, shall remain committed to that project.
7. The Judicial Council reserves the right to require a county to complete a project in the design or construction phase prior to its transfer to the state.
8. The Judicial Council ~~can~~ *may* negotiate design changes related to a court facility project with the county to the degree that the design changes do not increase the cost of the project to the county.
9. ~~The Judicial Council~~ *state* reserves the right to dispose of surplus property when title for the property transfers to the state. Prior to disposing of *any court facilities facility* that ~~were~~ *was* previously the responsibility of ~~the counties~~ *a county*, the state shall comply with the requirements of Government Code section 11010.5 et seq
10. Prior to the state making a decision to sell, lease or otherwise dispose of a court facility transferred from a county to the state, it shall consult and discuss the potential sale, lease or disposition with the affected county. The state shall also consider whether the potential new or planned use of the facility:
 - Is compatible the use of other adjacent public buildings.
 - Would unreasonably depart from the historic or local character of the surround property or local community.
 - Would have a negative impact on the local community.
 - Will unreasonably interfere with other governmental agencies that use or are located in or adjacent to the court facility.Additionally, the state shall consider whether the decision to cease using the facility or site outweighs a public good in maintaining it as a court facility or site.
11. In perpetuity, the counties shall transfer 75% of the unencumbered revenue generated by the Courthouse Construction fee to the *state* for allocation by the Judicial Council. The remaining 25% will be retained by the *local* court and allocated pursuant to policies and procedures adopted by the Judicial Council and state law.

Principles for negotiation involving mixed-use buildings

1. Responsibility for court facilities ~~can~~ *may* be accomplished by the state either holding fee title or entering into a lease agreement with a county or a private landlord or any other mutually-agreed to mechanism.
2. ~~The~~ *Each* county and the Judicial Council ~~each~~ *shall* have equity rights to the space occupied by the county and the *local* court, respectively, regardless of which party holds title.
3. Neither the ~~state~~ Judicial Council nor the county shall charge each other rent for space that the county or the courts occupies at the time the MOU is determined. Costs associated with additional space will be paid by the agency desiring more space.
4. In the case of mixed-use buildings, the state and the county shall be responsible for the operations and maintenance costs associated with their proportional shares of the building, and the county shall also be responsible for furnishing its payments to the state for operations and maintenance ~~costs~~ under the terms of ~~the~~ its MOE for the court's share of the building, unless otherwise mutually agreed by the parties.
5. The sale of property is permissible, regardless of which party holds title; however, neither party ~~can~~ *shall* be displaced or forced to move ~~at its expense~~ unless either party occupies 80% or more of a mixed-use facility. In such a case, the party occupying 80% or more shall be permitted to require that the minority occupant vacate the premises, should the majority occupant so desire. *However, the majority occupant shall compensate the minority occupant for relocation costs and equity at a fair market rate.*
6. ~~The cost of relocating from occupied space to new space will shall be borne by the agency desiring the new space. However, the departing party shall retain its equity interest in the vacated space.~~
7. The use of any space occupied by the county or the Judicial Council ~~must~~ *shall* be compatible with the facility and not substantially deteriorate or diminish the ability of either the county or the Judicial Council to use the remaining spaces effectively.
8. Should either party require additional space and wish to "buy out" the current tenant from its space, compensation will be made at the current market rate.
9. ~~Should unless either party occupy 80% or more of a mixed use facility, that party shall be permitted to require that the minority occupant vacate the premises, should the majority occupant so desire.~~